

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.15/2016

Order reserved on 6th October 2017

Order pronounced on 13th October 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

Smt. Indra Saxena, aged 60 years
w/o late Shri J P Saxena
r/o 10, Shiv Vihar, Avadhpu^ri
Agra (UP)

(Mr. Yogesh Sharma, Advocate)

..Applicant

Versus

1. Union of India through the General Manager
Northern Railway, Baroda House, New Delhi
2. The Chief Commercial Manager/PM
IRCA, IRCA Reservation Complex
State Entry Road, New Delhi

..Respondents

(Mr. Shailendra Tiwary, Advocate)

O R D E R

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 26.11.2014 (A/1) declaring to the effect that the whole action of the respondents not granting compassionate allowance in respect of husband of the applicant is totally illegal, arbitrary and against the rules and consequently pass an order directing the respondents to consider and to grant the compassionate allowances to the applicant for as per Rule-65 of the Railway Service (Pension) Rules, 1993 and consequently grant all the consequential benefits as per rules and railway board instructions on the subject matter from due date i.e. the life time arrears of her husband till his death and compassionate

allowance (family pension) with effect from 11.01.2013 to the applicant with arrears with interest.”

2. The factual matrix of the case is as under:-

2.1 The applicant is a widow of late Shri J P Saxena, who was removed from service from the Railway Department vide Annexure A/2 order dated 11.01.2005. At that time, he was working on the post of Enquiry & Reservation Clerk in the Northern Railway. Prior to passing of the Annexure A/2 penalty order, a charge sheet dated 31.10.1997 was issued to Shri J P Saxena for his unauthorized absence, pursuant to which an inquiry was conducted. The inquiry officer, in his report dated 23.12.2003, concluded as under:-

“1. Charge No.1 under conduct Rule 3.1 (i) relates to the integrity of the employee NOT PROVED.

2. Charge under conduct Rule No.3.1 (iii) relates to the devotion of duty to which badly affected due to remaining on un-authorized absent for long time by the C.O. is FULLY PROVED.”

2.2 Acting on the inquiry officer’s report, the disciplinary authority passed Annexure A/2 order dated 11.01.2005 removing Shri Saxena from service.

2.3 The applicant, being widow of late Shri Saxena, claims that in terms of Rule 65 of Railway Service (Pension) Rules, 1993 (for short ‘Pension Rules 1993’), she is entitled for grant of compassionate allowance and all consequential benefits as per rules and Railway Board’s instructions on the subject.

2.4 The applicant had submitted Annexure A/8 representation dated 30.01.2014 to the respondents praying for grant of compassionate allowance to her. Since no action was taken by the respondents on the said representation, she approached this Tribunal in O.A. No.1090/2014, which was disposed of vide order dated 28.03.2014 directing the respondents to consider the representation of the applicant within two months by passing a speaking order. In obedience of Tribunal's directions, the respondents have considered the representation of the applicant and rejected the same vide impugned Annexure A/1 order dated 26.11.2014.

Aggrieved by the said order, the applicant has filed the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. Pursuant to the notice issued, the respondents entered appearance and filed their reply and thereafter the applicant filed a rejoinder to the reply filed on behalf of the respondents.

4. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for parties on 06.10.2017.

5. Mr. Yogesh Sharma, learned counsel appearing for applicant submitted that applicant's husband was suffering with cancer and died of the disease on 10.01.2013. Due to his terminal ailment, he could not even file an appeal against Annexure A/2 order dated 11.01.2005, whereby he was removed from service. Mr. Sharma contended that the applicant is entitled for grant of compassionate allowance in terms of Rule 65 of the Pension Rules 1993. He argued that the Hon'ble Supreme Court in the case of **Mahinder Dutt Sharma v. Union of India & others**, (2014) 11 SCC

684 has laid down guidelines with regard to grant of compassionate allowance.

6. Elaborating further, Mr. Sharma submitted that the compassionate allowance can be denied only in case the infliction of penalty of dismissal or removal from service was done on any one of the following grounds:-

- (a) Moral turpitude.
- (b) An act of dishonesty towards his employer.
- (c) An act designed for personal gains from the employer.
- (d) An act aimed at deliberately harming a third-party interest; and
- (e) An act for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972.

He submitted that Rule 65 of the Pension Rules 1993 is analogous to Rule 41 of the CCS (Pension) Rules, 1972.

7. Mr. Sharma vehemently argued that as per the records, the husband of the applicant was suffering with cancer due to which he could not attend to his official duties and consequently, he was subjected to disciplinary proceedings for alleged act of unauthorized absence, and finally, removed from service vide Annexure A/2 penalty order. He submitted that due to his physical condition he could not even prefer an appeal against Annexure A/2 penalty order of removal from service. He argued that as per the parameters laid down by the Hon'ble Supreme Court in the case of

Mahinder Dutt Sharma (supra), the case of applicant's husband does not fall under any of five disentitled categories, mentioned above.

8. Concluding his arguments, Mr. Sharma submitted that considering the physical and medical condition of applicant's husband prior to his death, the applicant is entitled for grant of compassionate allowance in terms of Rule 65 of Pension Rules 1993, and hence the reliefs claimed may be allowed.

9. *Per contra*, Mr. Shailendra Tiwary, learned counsel for respondents submitted that Shri J K Saxena, deceased husband of the applicant, was a perpetual unauthorized absentee. He submitted that Shri Saxena had remained unauthorisedly absent for 2555 days between the years 1991 – 2001 and 1995 – 2011. He was on leave without pay for about 522 days; details of which are given in paragraph (10) of the impugned order.

10. Mr. Tiwary further submitted that during the course of disciplinary inquiry, Shri Saxena had only mentioned about sickness of his mother and later of his wife; he had never mentioned about his own sickness. He further submitted that 45 days' time was given to Shri Saxena to appeal against Annexure A/2 removal order dated 11.01.2005, but he failed to file an appeal before the next higher authority, i.e., the Deputy CCM/Admn. Mr. Tiwary concluded his arguments by stating that since the applicant's husband was removed from service for long unauthorized absence in different spells, the benefit of Rule 65 of Pension Rules 1993 cannot be extended to her for grant of the compassionate allowance.

11. I have considered the arguments of learned counsel for parties and have perused the pleadings and documents annexed therein.

12. It is undisputed fact that applicant's husband, Shri Saxena, was removed from service of Railway Department for unauthorized absence and not for any other reason. I have perused paragraph (10) of the impugned Annexure A/1 order, in which the details of his unauthorized absence are given. It is noticed that Shri Saxena was sanctioned LWP during the year 1991 to 2001 in various spells. The total LWP sanctioned to him comes to 522 days. Shri Saxena also remained unauthorizedly absent from duty for 2555 days from 1995 to 2001. Most of these unauthorized absences were during the period 1996 to 1998 (533 days) and 2001 to 2005 (1454 days). The documents placed on record clearly indicate that Shri Saxena was indeed suffering with cancer when the disciplinary proceedings were started against him for an unauthorized absence. The documents further indicate that Shri Saxena ultimately died of cancer on 10.01.2013. In view of this, it is quite understandable that due to his medical and physical conditions, Shri Saxena could not attend to his duties and remained unauthorizedly absent so much so that he could not even file an appeal against Annexure A/2 removal order.

13. Rule 65 of Pension Rules 1993 is, no doubt, analogous to Rule 41 of CCS (Pension) Rules, 1972, in respect to which Hon'ble Supreme Court, in the case of **Mahinder Dutt Sharma** (supra) has laid down certain guidelines in regard to grant of compassionate allowance. It is quite evident that the removal of Shri Saxena from service is not covered under any of five disentitled categories prescribed by the Hon'ble Apex Court in

Mahinder Dutt Sharma (supra), vis-à-vis grant of compassionate allowance.

14. The Railway Board also in its circular dated 04.11.2008 had directed its subordinate offices to consider all old cases in which disciplinary authorities have not passed any specific order for or against grant of compassionate allowance in terms of Rule 65 of Pension Rules 1993. In the present case, it could be clearly seen that in Annexure A/2 penalty order of removing Shri Saxena from service, the disciplinary authority has not said anything in favour or against grant of compassionate allowance. Hence, the case of the applicant for such allowance is required to be considered in terms of *ibid* circular of Railway Board as well.

15. From the documents placed on record, I am quite convinced that Shri J P Saxena was indeed suffering with cancer, which compelled him to remain absent from duty. It is further noticed that Shri Saxena had joined the Railway Department on 03.05.1988 and up to 1995 he had not indulged in unauthorized absence for any longer noticeable period. As mentioned earlier, his unauthorized absence was mostly from 22.10.1996 to 27.04.1998 and from 19.02.2011 to 11.01.2005. These are the periods when he, in fact, was afflicted with cancer and suffering with that. Taking this into consideration and also keeping in mind the ratio of law laid down by the Hon'ble Supreme Court in **Mahinder Dutt Sharma** (supra), I am of the view that the applicant, being widow of Shri Saxena, is entitled for compassionate allowance in terms of Rule 65 of Pension Rules 1993.

16. In the conspectus of discussions in the foregoing paragraphs, the O.A. is allowed. Respondents are directed to grant compassionate allowance to

the applicant in terms of Rule 65 of Pension Rules 1993, with all consequential benefits. This shall be done within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(K.N. Shrivastava)
Member (A)

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